IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:08/9/2004

CORAM:

THE HON'BLE MR.JUSTICE P.K.MISRA
AND
THE HON'BLE MR.JUSTICE F.M.IBRAHIM KALIFULLA

W.P.NO. 16128 of 2003
and
W.P.NO. 16129 of 2003
15273 OF 2000, 14917, 14918, 1516, 15167, 15205, 15206, 14661, 14666, 14912 TO 14914, 14911, 14915, 14916, 15187, 15188, 15189, 15190, 19623, 19647 TO 19649, 25006, 25007, 33706, 33702, 33703, 33705, 33707, 33708, 33709, 33715, 36691, 16514, 16508, 16509, 16513, 16515, 16524, 16526 TO 16529, 16534 TO 16536, 22452, 22451, 23143, 23155, 24370, 25004, 22450, 36589, 26477 TO 26484, 22581, 31994, 24682, 29843, 24284, 25060, 24758, 24759, 36363 TO 36365, 18507 OF 2003; 440, 21063, 18507, 18993 TO 18998, 19015 TO 19022, 19023 TO 19025, 19026 TO 19028, 19029, 19030, 19045, 19046, 19048 AND 21057 TO 21059 OF 2004
W.P.No.16128 OF 2003:

Tamil Nadu Highways Roadways Employees' Association,
(Regn.No.97/2001), rep. by its General Secretary ... Petitioner

-Vs-

1. Government of Tamilnadu,
rep. by its Secretary,
Highways Department,
Secretariat, Chennai-9.

2. The Chief Engineer (General),
Highways, Chepauk, Chennai.

3. The Divisional Engineer (High Ways),
Pudukkottai.

4. The Registrar, Tamil Nadu Administrative Tribunal,
Chennai-101. .. Respondents

For Petitioners: Ms. R.Vaigai
Mrs.Nalini Chidambaram
Mr.S.Silambanan
Mr.S.M.Subramaniam

Ms.M.Bharathi Mohan
Mr.S.Saravanavasan
Mr.M.Gnanasekar
Mr.M.Ravi
Mr.Arunachalam
Mr.P.Mani
Mr.R.Rengaramanujam
Mr.G.R.Swaminathan
Mr.S.Manikumar
Mr.M.Muthappan
Mr.V.Ravi
Mr.G.Elanchezhian
Mr.V.Illanchezhian

For Respondents: Mr.N.R.Chandran,
Advocate General
assisted by
Mr.A.L.Somayaji, Senior Counsel
Mr.D.Krishnakumar, Spl.G.P.

Prayer: All these Writ Petitions were preferred under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus, for the reliefs as stated therein respectively.

:COMMON ORDER

F.M.IBRAHIM KALIFULLA, J.

□□□□□□□□□□ In all these writ petitions, the challenge is to the common order of the State Administrative Tribunal dated 16.04.2003 in O.A.Nos.5028 of 2002 etc., wherein the State Administrative Tribunal, while upholding the abolition of Gang Mazdoors made under G.O.Ms.No.16 0 (Highways) dated 05.09.2002, directed the State Government to pay a sum equivalent to six months salary to each of the Gang Mazdoors, whether he had filed an Original Application before the Tribunal or not.

□□□□□□□□□□ 2. The petitioners were represented by different counsel, however main submissions were made by Ms.R.Vaigai, Ms.Nalini Chidambaram and Mr.S.M.Subramaniam, whose arguments were adopted by the other counsel appearing for various other petitioners. Submissions were made on behalf of the respondent State by the learned Advocate General, as well as Mr.A.L.Somayaji, the learned Senior counsel.

□□□□□□□□□□ 3. In order to resolve the controversy involved in these writ petitions, the facts which lead to the ultimate abolition of the posts of Gang Mazdoor is required to be stated:

(a) In the services of the State Government apart from the regular employees presently in the services of the State, either as permanent, or on temporary basis, persons were employed on temporary basis in the Work Charged Establishments for execution of specific works and projects. It is said that such employees used to be disbanded on the completion of the work for which they were recruited. It is also stated that even if some projects are completed, the personnel used to be engaged in some other projects and thereby

the continuity of even such temporary engagement was continued.
 (b) In the Work Charged Establishment also the employees were categorized into provincial and non-provincial. While the provincial employees were fitted in the time scale of pay, the non-provincial employees were paid some fixed pay. The above said practice was prevailing prior to the year 1977.

(c) In respect of such provincialised and non-provincialised Work Charged employees, there was a demand for extending various other benefits payable to government servants such as Leave, Retirement benefits etc., The State Government after considering the grievances expressed by certain associations representing such Work Charged employees came forward with G.O.Ms.No.51 dated 14.01.1997, in and by which all Work Charged employees who were in the pay scales of particular scale and above were brought to regular establishment and were allowed all the benefits that were payable to regular government servants.
(d) Similarly, non-provincialised Work Charged personnel on completion of five years of continuous service were also brought to the regular establishment. Simultaneously, the Government also revoked the power of Superintending Engineers in the P.W.D Highways and Rural Works Department to recruit employees for Work Charged establishments. In other words, the Government directed that the recruitment of Work Charged establishment should be stopped forthwith in all the Departments of the Government.
(e) Further the Heads of Departments were requested to submit necessary proposals to the Government for creation of adequate number of posts required for absorbing the existing non-provincialised Work Charged establishment presently who had by then completed five years of service as on 01.01.1977. Similar such directions were given to submit proposals for creation of adequate number of posts for absorbing the non-provincialised workers in the regular establishment as and when they complete five years of services on 1st January of the respective years.
(f) In G.O.Ms.No.406 (Transport) dated 23.02.1987, the State Government passed orders to the effect that 10,634 Gang Mazdoor posts should be created and such posts should be made permanent. However, in G. O.Ms.No.815 dated 05.06.1992, the State Government imposed a ban on filling up of the posts of Gang Mazdoors.
(g) In the year 1996, at the instance of the Honourable Chief Minister an assessment was made as to the requirement of the total number of Gang Mazdoors depending upon the total length of roads to be maintained in the State Governments of Tamilnadu. In pursuance of the said exercise, G.O.Ms.No.184 dated 29.05.1997 came to be issued, in which the total number of posts of Gang Mazdoors required for different Departments such as Highways, National Highways, National Highway No.45 and certain other Departments was assessed at a level of 14,872. In the very same Government Order, the total number of such posts that had been filled up as on that date was arrived at 5,559. The remaining posts to be filled was calculated at 9,813.
(h) In the said Government Order, while arriving at the total requirements of 14,872, the State Government took note of the creation of 1 0,634 posts in G.O.Ms.No.406 dated 23.02.1987 and also the number of posts filled up out of the 10,634 which remained at 5,575 and it was therefore, held that while 9,813 posts were required, since 5,575 posts were already

available, it was decided to create additional posts to the extent of 4,238.
(i) In order to fill up the above said posts the ban imposed in G.O.Ms.No.815 dated 05.06.1992 was also removed. It is further stated in the said Government Order that such of those Gang Mazdoors who are to be recruited, the first year of their employment would be treated as a training period on a consolidated pay of Rs.1,500/- and from the second year onwards, they would be fitted in the concerned scale of pay.
(j) The additional financial liability from the year 1997-98 was determined at a sum of Rs.15 crores and the necessary allotment of funds was also made. Subsequent to the issuance of G.O.Ms.No.184 dated 29.05.1997, under G.O.Ms.371 dated 19.08.1997 what ever further requirements and the procedures to be followed as well as relaxations to be given in the relevant rules were also made.
(k) In G.O.Ms.No.371 dated 19.08.1997, the relevant factors were that the age limit was uniformly fixed at 35 for all categories, while directing the application of Rule of Reservation. Yet another significant factor was that the concerned Divisional Engineers were allowed to make the recruitment without the aid of the Employment Exchange. They were allowed to select the persons on 1 : 3 basis and select the ultimate appointee by lot system. Necessary relaxations in the age as required under Rule 5(1) of the Tamilnadu Basic Servant Rules and also Rule 48 of the Tamilnadu State and Subordinate Service Rules under which the general requirements of calling for application through Employment Exchange was exempted.

(l) Pursuant to the above said G.O.Ms.No.184 dated 29.05.1997 and G.O.Ms.No.371 dated 19.08.1997, the employees recruited for the posts of Gang Mazdoors were issued with the orders of appointment which stipulated that they would be given training for a period of one year on a consolidated pay of Rs.1,500/-, that if they fail to maintain the roads properly their services would be terminated during the training period itself and that such temporary engagement cannot be the basis for claiming regular employment. However, it is not in dispute that all such Gang Mazdoors who were recruited and appointed on the above basis came to be regularized in their respective employment on completion of one year of service. Further on such regularization they were also fitted in the scale of pay with the basic pay of Rs.2,550/- Necessary orders confirming the completion of probation period was also issued to the respective employees. (m) Thus such of those Gang Mazdoors who were recruited pursuant to the above G.O.Ms.No.184 dated 29.05.1997 and G.O.Ms.No.371 dated 19.08.1997 were regularized in the services of the respective Departments had become the regular employees of the State. They were working as such till the issuance of G.O.Ms.No.160 dated 05.09.2002 when the State Government took a decision to abolish such of those Gang Mazdoors who were recruited on lot basis after 1997, the number of which was ascertained as 9,728 and the posts were abolished. It was also mentioned therein that such of those posts in which Gang Mazdoors were working even prior to the year 1997 can be reduced as and when such employees retire from the services. Pursuant to the issuance of the G.O.Ms.No.160 dated 05.09.2002 all the 9758 Gang Mazdoors were issued with stereo typed orders of termination dated 07.09.2002 and the termination was to take effect from the afternoon of 07.09.2002.

 (n) Challenging the said orders of termination several Original Applications were filed before the State Administrative Tribunal in O.A.Nos.5028 of 2002 etc., in which the common impugned order came to be passed on 16.04.2003. Challenging the above said orders, the present writ petitions have been filed.

(o) The connected Writ Petitions have been filed by the Government of Tamilnadu against the direction of the Tribunal directing the State Government to pay sum equivalent to six months' salary to each of the Gang Mazdoors.

□□□□□□□□□□□ 4. Ms.R.Vaigai, in her submissions, contended that the action of the respondent/State in abolishing the post of Gang Mazdoor was wholly arbitrary and unreasonable, violating Article 14 of the Constitution of India; that the consequent termination order pursuant to the abolition was resorted to in violation of the provisions of the Industrial Disputes Act and that the order of the Tribunal in not adverting to such serious violation while passing the impugned order was therefore liable to be set aside. In answer to Writ Petitions of the State, it was further contended that by virtue of Rule 38 and 43 of the Pension Rules, inasmuch as the various Gang Mazdoors were entitled for pension as well as gratuity, even the amended prayer of the respondent in their writ petition cannot also be considered.

□□□□□□□□□□□ 5. Based on the provisions of the Industrial Disputes Act, the learned counsel contended that the activities of the Department, namely the "Highways Road Maintenance" would fall within Section 2(m) of the Factories Act and consequently, by virtue of the total strength of employees employed in each Division of that Department, the application of Chapter V (B) of the Industrial Disputes Act was imperative and therefore, the failure to follow the statutory requirements would render the termination orders invalid in law. The learned counsel sought to make a distinction as between sovereign function of the State and the Industrial activity also managed by the State, to contend that there was no scope for the State Government to exclude the application of the provisions of the Industrial Disputes Act to the case on hand on the ground of sovereign function of the state. In support of her submissions, she placed reliance upon the judgments reported in "(1999)1 SCC 596 (LAL MOHAMMAD AND OTHERS versus INDIAN RAILWAY CONSTRUCTION CO.LTD., AND OTHERS); (2000)3 SCC 224 (MUNICIPAL CORPORATION OF DELHI versus FEMALE WORKERS (MUSTER ROLL) AND ANOTHER); 20 04(4) 2 LLJ 213, (1996)2 SCC 293 (CHIEF CONSERVATOR OF FORESTS AND ANOTHER versus JAGANNATH MARUTHI KONDHARE AND OTHERS); (1983)2 SCC 217 (AJIT SINGH AND OTHERS v. STATE OF PUNJAB AND ANOTHER) , (2002)10 SCC 432(U.T. CHANDIGARH & OTHERS versus AVTAR SINGH AND OTHERS) and (20 04)2 SCC 510 (UNION OF INDIA versus NAVEEN JINDAL AND ANOTHER)".

□□□□□□□□□□□ 6. Mr.S.M.Subramaniam, learned counsel appearing for the petitioners in W.P.No.33706 of 2003 contended that when relaxation of the Special Rules were made by invoking Rule 48 of the general rules while making the appointment of Gang Mazdoors such an action was consciously made by the State Government at the relevant point of time by taking into account all the relevant circumstances, it cannot be now permitted to turn around and contend that there was irregularity in such appointments. The learned counsel also contended that at the time when the termination orders were issued it was not the case of the State that such termination orders were resorted to on the ground that their entry into services was irregular. He also pointed out that such a ground was never stated in the order of termination. The learned

counsel would state that the present stand of the respondent/ state in their additional grounds was purely an after-thought and the same should not be countenanced.

□□□□□□□□□□□ 7. Ms.Nalini Chidambaram the learned counsel appearing for the petitioner in W.P.No.14917 and 14918 of 2003 etc., contended that the Government Order abolishing the post of Gang Mazdoors was wholly arbitrary and that it suffered form the vice of unreasonableness. According to the learned Senior Counsel the abolition was also tainted with mala fides.

□□□□□□□□□□□ 8. As against the above submissions of the learned counsel for the petitioners, the learned Advocate General formulated his submissions on five grounds, namely that the attack of the impugned orders of termination was never made on the basis of violation of the provisions of the Industrial Disputes Act, though such a contention was in fact raised in the original application. It was then contended that such a contention could not have been dealt with by the State Administrative Tribunal as it lacked jurisdiction. According to the learned Advocate General in view of the said legal position, no fault can be found with the order of the Tribunal on that score.

9. Secondly, it was contended that even assuming such a ground could be raised in the Original Applications or in these writ petitions, inasmuch as Highways Department of the State Government is the sovereign function of the State, it would be outside the purview of the provisions of the Industrial Disputes Act. Thirdly, it was contended that even if the activities of the Highways are construed as an industry, the order of termination due to abolition of posts will not attract the provisions of the Industrial Disputes Act.□ Fourthly, it was contended that the abolition of posts was justified for the reasons which weighed with the Government. It was lastly contended that when the Tribunal held that the policy of the State in abolishing the post of Gang Mazdoor was justified, the award of compensation for payment of six months salary was highly excessive.

10. On the question of jurisdiction of the Tribunal to deal with the issue touching upon the violation of the provisions of the Industrial Disputes Act, the learned Advocate General relied upon the judgments reported in "(1995)5 SCC 75(THE RAJASTHAN STATE ROAD TRANSPORT CORPORATION & ANOTHER, ETC. versus KRISHNA KANT, ETC.) and (2001)9 SCC 526 (COUNCIL OF SCIENTIFIC AND INDUSTRIAL RESEARCH AND ANOTHER versus PADMA RAVINDRANATH (SMT.) AND OTHERS) and also 2002(3) ATC 629", as well as the judgments reported in 1991 WLR 699 (INDIAN BANK, REP. BY ITS ASSISTANT MANAGER versus R,.S. THIRUVENGADAM) and (2004)4 SCC 268 (U.P.STATE BRIDGE CORPORATION LTD. AND OTHERS versus U.P.RAJYA SETU NIGAM S.KARAMCHARI SANGH) . On the question relating to the sovereign function of the State the learned Advocate General contended that the Gang Mazdoors failed to discharge their onus of establishing that the respondent was carrying on an industry and that it did not form part of sovereign functions of the State. He also relied upon the judgments reported in " 1988 LIC 690(EXECUTIVE ENGINEER, NATIONAL HIGHWAY DIVISION, BALASORE AND OTHERS versus REGIONAL PROVIDENT FUND COMMISSIONER, BHUBANESWAR), 1973 LIC 553 (SUPERINTENDING ENGINEER, NATIONAL HIGHWAY PROJECT, BHUBANESWAR versus BAIDHAR LENKA AND ANOTHER), (2001)9 SCC 713 (STATE OF GUJARAT AND OTHERS versus PRATAMSINGH NARSINGH PARMAR)".

11. The learned Advocate General sought to make a distinction as between the functional abolition of the very activity when compared to mere

abolition of work. In support of his submissions, reliance was placed upon the judgment reported in AIR 1982 SC 1107 (K. RAJENDRAN AND OTHERS, ETC. versus STATE OF TAMIL NADU). Further by referring to the various Government Orders right from G.O.Ms.No.51 dated 1.02.1977 up to G.O.Ms.No.371 dated 19.08.1997, the learned Advocate General contended that G.O.Ms.No.371 dated 19.08.1997 in relaxing the various requirements of the Subordinate Service Rules, as well as, the special rules being illegal, in every respect, by interfering with the order of termination of the Gang Mazdoors, such an illegality should not be restored. He placed reliance upon the decision reported in 2002(4) CTC 385. It was then contended that Gang Mazdoors by virtue of their orders of appointment as well as their subsequent regularisation, were only holding temporary posts and therefore, even applying Section 3 8 of the Pension Rules, it can not be held that the abolition would get vitiated, inasmuch as Section 38 only contemplate three months notice and nothing more. Reliance was placed upon the judgment reported in AIR 1996 SC 2228 (STATE OF MAHARASHTRA versus PURUSHOTTAM AND OTHERS).

12. Mr.A.L.Somayaji, the learned Senior counsel who also appeared for the State placed heavy reliance upon the Full Bench decision of the Punjab and Haryana High Court, reported in "1983(1) LLJ 309 (STATE OF PUNJAB versus KULDIP SINGH AND ANOTHER)" and contended that in respect of essential services of the State, which does not involve any Trade or Business or even an analogous activity, the provisions of the Industrial Disputes Act cannot be invoked. According to the learned Senior counsel, even if it were to be held that the provisions of the Industrial Disputes Act gets attracted, the remedy should have been availed before the appropriate adjudicatory forum created under the provisions of the Industrial Disputes Act and not under the State Administrative Tribunal. The learned senior counsel also contended that when the initial induction of the Gang Mazdoors was contrary to the rules, accepting their claim would result in an illegality being given a seal of approval, or restoration of an illegal action which should not be made. The learned counsel placed reliance upon the judgment reported in "(1997)2 SCC 1 (ASWANI KUMAR AND OTHERS versus STATE OF BIHAR AND OTHERS)".

13. The learned Senior Counsel also attempted to point out that G. O.Ms.NO.371 dated 19.05.1997 was contrary to the rules framed under Article 309 of the Constitution which was not an acceptable system of selection and furthermore, the exemption of Employment Exchange Rule was not made prior to the paper publication calling for the applications. It was also contended that based on Rule 48 of the Tamilnadu State and Subordinate Rules an erroneous relaxation of Rules 4 & 5 could not have been made. The learned Senior Counsel therefore contended that the original appointment itself was a nullity and therefore consequently, such an illegal appointment can never be restored. Reliance was placed upon the decisions reported in 1973 (2) LLJ 180 (T.C. SREEDHARAN PILLAI versus STATE OF KERALA AND OTHERS), AIR 1992 SC 789 (DELHI DEVELOPMENT HORTICULTURE EMPLOYEES' UNION versus DELHI ADMINISTRATION, DELHI AND OTHERS); AIR 1966 SC 828 (GADDE VENKATESWARA RAO versus GOVERNMENT OF ANDHRA PRADESH AND OTHERS); 2004 WLR 434 2004 Wr.L.R.4 34 (UNION OF INDIA, UNION TERRITORY OF PONDICHERRY, REP. BY THE CHIEF SECRETARY TO GOVT. AND TWO OTHERS versus ILANGO, ETC.,) and 2004(3) CTC 549(STATE OF UTTARANCHAL, THROUGH COLLECTOR, DEHRADUN AND ANOTHER versus AJIT SINGH BHOLA AND ANOTHER) and 2002(4) CTC 385 (L. JUSTINE AND ANOTHER versus THE REGISTRAR OF COOP.SOCIETIES, CHENNAI AND TWO OTHERS).

14. Having heard the learned counsel for the respective parties and on an analysis of the various materials placed before us, we are of the considered view that the following relevant questions are required to be determined, viz.,

"1. Whether the Administrative Tribunal could have gone into the question as to the violation of the provisions of the Industrial Disputes Act while considering the order of termination of the "Gang Mazdoors"?

2. Whether in these Writ Petitions, this Court exercising its power under Article 226 of the Constitution, can examine the noncompliance of the provisions of the Industrial Disputes Act?

3. If there is scope for examining the question posed for consideration in points 1 and 2, whether at all the Industrial Disputes Act would be applicable to the establishment, viz., the Department of Highways of the State of Tamil Nadu and consequently to the "Gang Mazdoors"?

4. If it were to be held that Industrial Disputes Act is applicable, was there any violation of the provisions of the Industrial Disputes Act, and if so, what is the relief to be granted?"

5. Whether the impugned order of the State Administrative Tribunal can be legally sustained?

Apart from the above questionss, one another additional question now raised on behalf of the State, is,

"Whether the very employment of all the "Gang Mazdoors" concerned in these Writ Petitions, was in accordance with law or such employment should be held to be void and consequently no relief can be granted to any of them?"

15. This additional question came to be raised at the instance of the State. According to Thiru A.L.Somayaji, learned senior counsel, the issuance of G.O.Ms.No.184 dated 29-5-1997, and G.O.Ms.No.371 dated 19-8-1998 granting relaxation of age limit as well as the requirement of sponsorship through Employment Exchange was illegal and further the direction in G.O.Ms.No.371 to make the ultimate selection by lots can never be approved. The learned senior counsel, therefore, contended that when the whole selection and appointment of "Gang Mazdoors" was in contravention of the Tamil Nadu State and Subordinate Service Rules, such appointments were avoid ab initio and therefore, restoration of such appointments would only result in judicial forum approving of an illegal action.

16. On taking up the various questions involved, in the first place, the learned Advocate General, contended that the laying of roads as well as maintenance of it is a sovereign function of the state and therefore, the application of the provisions of the Industrial Disputes Act was ruled out and that in any event, the State Administrative Tribunal in its limited sphere of its jurisdiction was not competent to examine the said question. In this context, a reference was made to Section 28 of the Administrative Tribu nals Act, 1985, which is to the following effect:

"Sec.28. Exclusion of jurisdiction of courts except the Supreme Court under Article 136 of the Constitution:-

On and from the date from which any jurisdiction, powers and authority becomes

exercisable under this Act by a Tribunal in relation to recruitment and matters concerning recruitment to any Service or post or service matters concerning members of any Service of persons appointed to any Service or post,
(no court except,-
(a) the Supreme Court; or
(b) any Industrial Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947 (14 of 1947) or any other corresponding law for the time being in force,
shall have), or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such recruitment or such service matters."

17. This question was considered by various Administrative Tribunals functioning in different states and conflicting views came to be expressed by different Benches. Ultimately that question came to be referred before a Five Member Bench whose order is reported in "(1990) 14 Administrative Tribunal Cases 914 (A.PADMAVALLLEY AND OTHERS versus CPWD)". The larger Bench of the Central Administrative Tribunal framed as many as four issues for determination and for our present purpose, it would be suffice to refer to first two issues, viz.,

"1. Whether the CAT has concurrent jurisdiction with the Industrial Tribunal/Labour Court on the ground that it became a substitute not only for all Courts including the High Court but for all Tribunals in respect of service matters and whether it is left to the workman to choose the forum for redressal of the grievance in respect of rights conferred under the Industrial Disputes Act.

"2. Whether in the event of the first issue being answered in the negative, the Administrative Tribunal in exercise of powers analogous to Articles 226 and 227, Constitution of India, is competent to entertain or consider applications in respect of disputes/claims arising under the Industrial Disputes Act."

18. Ultimately, the above questions were answered in para 43 of its Judgment, as under:

"43. To sum up, our conclusions are as follows:

(1) The Administrative Tribunals constituted under the Administrative Tribunals Act are not substitutes for the authorities constituted under the Industrial Disputes Act and hence the Administrative Tribunal does not exercise concurrent jurisdiction with those authorities in regard to matters covered by that Act. Hence all matters over which the Labour Court or the Industrial Tribunal or other authorities had jurisdiction under the Industrial Disputes Act do not automatically become vested in the Administrative Tribunal for adjudication. The decision in the case of 'Sisodia which lays down a contrary interpretation is, in our opinion, not correct.

(2) An applicant seeking a relief under the provisions of the Industrial Disputes Act must ordinarily exhaust the remedies available under that Act.

(3) The powers of the Administrative Tribunal are the same as that of the High Court under Article 226 of the Constitution and the exercise of that discretionary power would depend upon the facts and circumstances of each case as well as on the principles laid down in the case of Rohtas Industries.

(4) The interpretation given to the term 'arrangements in force' by

the Jabalpur Bench in Rammoo case is not correct."
19. Before reaching the above said conclusions, the larger Bench of the Tribunal, held as under in para 41:-
"41. In the Rohtas Industries case, the decision in Premier Automobiles case was cited with approval and it was held that if the I.D.Act creates rights and remedies it has to be considered as one homogeneous whole and it has to be regarded as uno flato. But it was made clear that the High Court could interfere in a case where the circumstances require interference. This is clear from the following observation in regard to exercise of jurisdiction under Article 226: (SCC p.88, para 9)
"This court has spelt out wise and clear restraints on the use of this extraordinary remedy and High Courts will not go beyond those wholesome inhibitions except where the monstrosity of the situation or other exceptional circumstances cry for timely judicial interdict or mandate. The mentor of law is justice and a potent drug should be judiciously administered."

20. The Full Bench decision of the Tribunal referred to above came up for consideration before the Hon'ble Supreme Court in the judgment reported in "(2001)9 SCC 526 (COUNCIL OF SCIENTIFIC AND INDUSTRIAL RESEARCH AND ANOTHER versus PADMA RAVINDRANATH (SMT.) AND OTHERS)", wherein, the decision of the Full Bench reported in "1990(14) ATC 914 (A.PADMAVALLLEY AND OTHERS versus CPWD, HYDERABAD)" in so far as it related to the principles set out in its conclusions on item Nos.1 and 2 alone were referred to in the said judgment and the Hon'ble Supreme Court gave its seal of approval. The Hon'ble Supreme Court dealt with an appeal against an order of another Full Bench of the Central Administrative Tribunal in a proceeding, where, a question arose as to "whether Council of Scientific and Industrial Research (FCS 12) or its constituent unit would come within the definition of 'industry' and whether the persons employed by them in any capacity are workmen within the meaning of Industrial Disputes Act, 1947?". The Full Bench of the Tribunal, answered the question by stating that CSIR is an industry falling within the definition of an 'industry' under Section 2(j) of the Industrial Disputes Act and as regards the constituent unit of the council was concerned, the Tribunal held that the matter had to be decided on the facts arising in the case and in the absence of appropriate data and material, it would not be proper to decide such a question.
While dealing the above said issues, the Hon'ble Supreme Court has held in para 5 as under:
"5. In the circumstances, so far as the law on the question whether CSIR is an industry is concerned, it is now settled by the decision of five judges of the Tribunal referred to above and thus decision of the Full Bench becomes ineffective. So far as the merit of matter is concerned the decision of the Division Bench would bind the parties. The view expressed by the Tribunal in the circumstances is unnecessary and uncalled for. The order made by the Tribunal is therefore set aside. The appeals are allowed. No costs."
21. A similar question came up for consideration before the Division Bench of Himachal Pradesh High Court in the judgment reported in "2002(3) ATJ 629 (H.P.AGRO INDUSTRIES CORPN.LTD. AND OTHERS ETC. Versus RAJ KUMAR AND ANOTHER ETC.)". The question that was posed for consideration was, "whether the orders passed by the Administrative Tribunal by invoking the provisions of the Industrial Disputes Act or under the corresponding law by

the time being in force in favour of the petitioners, were illegal, unlawful and without jurisdiction". The Division Bench of the Himachal Pradesh High Court, ultimately concluded that- where the rights or obligations were created by the Industrial Dispute Act, the only remedy for the aggrieved person has to approach the forum constituted by that Act alone and any other interpretation would be inconsistent with and contrary to law laid down by the Hon'ble Supreme Court.

22. In the judgment reported in "(2004)4 SCC 268 (U.P.STATE BRIDGE CORPORATION LTD. AND OTHERS versus U.P.RAJYA SETU NIGAM S.KARAMCHARI SANGH)", the Hon'ble Supreme Court, while holding that the rights and obligations sought to be enforced by the Union in the Writ Petition, were those created by the Industrial Disputes Act, the remedy was to invoke the forum created under the said Act, was pleased to hold in para 12 as under:

"12. Although these observations were made in the context of the jurisdiction of the civil court to entertain the proceedings relating to an industrial dispute and may not be read as a limitation on the Court's powers under Article 226, nevertheless it would need a very strong case indeed for the High Court to deviate from the principle that where a specific remedy is given by the statute, the person who insists upon such remedy can avail of the process as provided in that statute and in no other manner."
(Emphasis added)

23. On behalf of the 'Gang Mazdoors', Ms.R.Vaigai, learned counsel appearing for those petitioners, placed reliance upon the judgment of the Hon'ble Supreme Court reported in "(1987)4 SCC 99 (KRISHNA DISTRICT CO-OPERATIVE MARKETING SOCIETY LIMITED, VIJAYAWADA versus N.V. PURNACHANDRA RAO AND OTHERS)", wherein, the Hon'ble Supreme Court, while dealing with a case arising under Section 41(1) and (3) of the Andhra Pradesh Shops and Establishments Act, approved the Division Bench Judgment of the High Court, wherein, it was held that in considering the termination of service of an employee by way of retrenchment was legal and justified, was open for consideration by the authority under the said Act and also determine whether Section 25(F) and (G) of the Central Act were complied with or not. It was further held that the Authority had jurisdiction to set aside the orders of termination for giving appropriate relief in the event of the finding to the effect that there was no compliance of Section 25(F) and (G) of the Central Act.

24. It will also be useful to refer to two other Division Bench Judgments of our High Court, reported in "1990 (2) LLN 26 (INDIAN BANK (REP. BY ITS ASSISTANT GENERAL MANAGER) versus R.S. THIRUVENGADAM) and "1990(2) LLN 355 (INDIAN BANK, REP. BY ITS GENERAL MANAGER, MADRAS versus K.S.GURUMOORTHY AND ANOTHER)". In the judgment reported in "19 90(2) LLN 26", the then Hon'ble Chief Justice Dr.A.S.Anand, as he then was, while concurring with the main judgment rendered by the Hon' ble Justice Kanakaraj, as he then was, has stated the power of this Court under Article 226 of the Constitution, while rendering substantial justice. Para 39 of the order of the learned Chief Justice is to the following effect:-

"39. Even ignoring what has been said above, the whole question can be looked at from another angle also. This Court is competent enough, while exercising jurisdiction under Article 226 of the Constitution of India, to

ignore the order of the Authority under the Shop Act on the alleged ground of lack of jurisdiction on and with a view to render justice itself proceed to examine the validity of the order of discharge of the first respondent from service on the basis of the material already on the record, without in any way getting into the blurred area of critical appraisal of evidence or adjudicate on disputed questions of fact. If the Court finds that the order of discharge from service is per se unsustainable, it can extend its arm to set it at naught rather than to ask another forum to first adjudicate on its validity...."

In the judgment reported in "1990(2) LLN 355" (cited supra), the Division Bench reiterated the legal position as under in para 7:

"7. ..... The proceedings in the instant case arise out of a writ petition filed under Article 226 of the Constitution of India. Writ jurisdiction is undoubtedly, an equitable jurisdiction and while balancing the equities between the parties asserting rival claims, the Court examines the conduct of the parties besides nature of the proceedings with a view to render justice. While exercising writ jurisdiction, the Courts generally make an attempt to reach wherever injustice is, so as to render justice. However, the principles of equity must, for ever, remain present to the mind of the Court and those principles are extended to do substantial justice to a party and not get carried away by narrow technicalities which may 'legitimise' injustice."

25. In the above stated legal background stated in the above referred to decisions, when the competence of the Administrative Tribunal to go into the question as to the violation of the provisions of the Industrial Disputes Act is considered, it will have to be stated that the Hon'ble Supreme Court, while approving the Full Bench decision of the Tribunal, reported in "(2001)9 SCC 526" (cited supra) had specifically referred to only first two conclusions of the Full Bench of the Tribunal. It cannot be lost sight of that in its third conclusion, which has been elaborately set out in para 41 of the Tribunal's Full Bench judgment, it has been stated that that would be open for the Tribunal to set aside the illegal order of termination and direct reinstatement of the employee while leaving it open to the employer to act in accordance with the statutory provisions and that to that extent, the alternate remedy pleaded cannot act as a bar for exercising jurisdiction under Article 226 of the Constitution. For stating the law to that extent, the Full Bench of the Tribunal was equating itself to that of this Court for invoking the extraordinary jurisdiction conferred under Article 226 of the Constitution.

26. It is also to be noted that in the Original Applications before the Administrative Tribunal, the applicants were challenging the validity of the Government Order as being violative of Article 14 of the Constitution, a contention which possibly could not have been entertained by the Industrial Tribunal of the Labour Court.

27. In the case on hand, before the State Administrative Tribunal, there was a specific contention raised in the written submissions filed on behalf applicants in O.A.No.13786 of 2002 pointing out that the orders of termination wherein, violation of Section 25(F) of the Industrial Disputes Act and therefore, such termination orders were ab initio void. It is also common ground that there was no such compliance of the provisions of either Section 25(F) of the Industrial Disputes Act or the stipulations contained in Chapter V-(B) relating to retrenchment of the employees.

28. All the 'Gang Mazdoors' came to be employed by specific orders of appointments in the year 1997 and came to be terminated in the year 2002. In between their services were regularised after completion of the required period of probation . It is relevant to state that while at the time of their initial appointment, they were paid a consolidated wages, on their regularisation, they were fixed in time scale of pay. Immediately, after the issuance of the orders of termination, the 'Gang Mazdoors' approached the State Administrative Tribunal by filing several Original Applications by joining together in several groups. In fact, the Tribunal, though has not analysed the question as to the violation complained of based on the provisions of the Industrial Disputes Act, it had gone into the merits of the orders of termination and when it ultimately held that the abolition of the posts of 'Gang Mazdoors' of 9728 being the policy decision of the State Government, the same cannot be interfered with. The Tribunal, was however, of the view that the 'Gang Mazdoors' were entitled for some compensation and accordingly, directed the respondent State to pay a sum equivalent to six months salary to all the applicants as well as the other similarly placed 'Gang Mazdoors' who did not approach the Tribunal.

29. In the above said factual situation, the question for consideration is, whether it can be held that the Tribunal had every jurisdiction to go into the question about the violations of the provisions of the Industrial Disputes Act while dealing with a case of nonemployment of an employee.

30. Though in the judgment reported in "1987(4) SCC 99" (cited supra), while dealing with a case, which arose under the provisions of the Andhra Pradesh Shops and Establishments Act, 1966, the Hon'ble Supreme Court was pleased to hold that the Shops Act Authority will have every jurisdiction to deal with the contention based on violation of the provisions of the Industrial Disputes Act in particular, Section 25(F) and (G), the later decision of the Hon'ble Supreme Court reported in "(2001)9 SC 526" (cited supra), which dealt with a case arising out of the proceedings from a Central Administrative Tribunal, has virtually held that an applicant seeking relief under the provisions of the Industrial Disputes Act must ordinarily exhaust the remedies available under that Act. Even though in the said judgment, the Hon' ble Supreme Court was pleased to approve of the Full Bench view of the Tribunal reported in 1990(14) ATC 914 (cited supra), such an approval of the said Full Bench decision could only be traced to the effect that even the said Tribunal, if at all, could exercise the powers analogous under Article 226 of the Constitution, can examine the correctness of the order of termination in every respect under certain extraordinary situations and that it should be judiciously administered. Therefore, de hors the conclusion of the Full Bench of the Tribunal reported in "1990(14) ATC 914" (cited supra) in so far as it held that an applicant seeking a relief under the provisions of the Industrial Disputes Act must ordinarily exhaust the remedies available under that Act, the powers of the Tribunal under Article 226 being available with it as stated in para 43(3) of its judgment, in exercise of such power, with the self imposed restrictions, when justice demands what this Court could do, the Tribunal could equally administer justice without any limitation. In that way it will have to be held that Tribunal could have examined the point raised based on the violation of the provisions of the Industrial Disputes Act.

31. Again, when the legal position stated in the subsequent

judgment of the Hon'ble Supreme Court reported in "2004 (4) SCC 268" (cited supra) is perused, it reaffirms the above said position. In this decision, the Hon'ble Supreme Court would only point out that under Article 226 of the Constitution, it would need a very strong case indeed for the High Court to deviate from the principle that where specific remedy is given by the statute, the person who insists upon such remedy can avail of the process as provided in that statute and in no other manner.

32. The resultant position of the above discussion, would lead us to the conclusion that in the facts and circumstances of the case, where about 9728 employees complained a serious violation of the provisions of the Industrial Disputes Act and where such violations complained of by those 'Gang Mazdoors' have been prima facie found to be not in controversy, the question would be, whether the said 'Gang Mazdoors' who are 9728 in number should now be driven to work out their remedy by invoking the jurisdiction of the forums created under the Industrial Disputes Act by raising disputes against their non employment. At the risk of repetition, it will have to be stated that their employment which commenced from 1997 came to an end in the year 2002 and in spite of a point raised by way of a contention before the State Administrative Tribunal, the said contention was never considered by the Tribunal and in the year 2004, would it be justified in directing the whole lot of 9728 workmen to work out their remedy under the provisions of the Industrial Disputes Act by approaching the machinery provided under that Act. It is also relevant to be stated that as on date, there is no Presiding Officer in the State Administrative Tribunal and we can also take judicial notice of the fact that the State Government has decided to abolish the Tribunal itself. In the said scenario, we find force in the contention of Ms.R.Vaigai in relying upon the Division Bench Judgment of this Court reported in "1991Wr.L.R.69 9" (cited supra) in particular paragraph 7 of the judgment of His Lordship The Chief Justice Dr.A.S.Anand, as he then was, as well as, the judgment reported in "1990(2) LLN 355", paragraph 7 (mentioned above).

33. Therefore, going by the law laid down by the Hon'ble Supreme Court in "(2004)4 SCC 268 (U.P.STATE BRIDGE CORPORATION LTD. AND OTHERS versus U.P.RAJYA SETU NIGAM S.KARAMCHARI SANGH)" paragraph 12 as well as the Division Bench judgments referred to above, we are convinced that even though the grounds of attack of the petitioners against the order of the Tribunal as well as the orders of termination issued to the 'Gang Mazdoors' on the footing that such orders of termination were in violation of the provisions of the Industrial Disputes Act, the same can be examined in these Writ Petitions in the light of the extraordinary situation that demands such scrutiny in these Writ Petitions. We, accordingly hold that in exercise of our jurisdiction under Article 226 of the Constitution, it would be justiciable to examine the said aspect in these Writ Petitions.

34. In the light of our conclusions as above, we answer the questions 1 and 2 against the State Government.

35. The next question is, as to whether at all the Industrial Disputes Act would be applicable to the establishment, viz., Department of Highways of State of Tamil Nadu and consequently, to Gang Mazdoors.

36. While on behalf of the petitioners, it was contended that the activities of the Department of High Ways in the matter of maintenance of the public roads would fall within the definition of 'industry' as defined in

the Industrial Disputes Act, according to the respondent-State, the said activity being the sovereign function of the State, would not fall within the four corners of the provisions of the Industrial Disputes Act and therefore, the violations complained of based on the provisions of the Industrial Disputes Act cannot be gone into.

37. In this context, it would be worthwhile to refer to the certain decisions relied upon by both parties.

38. In the judgment reported in "1988 LIC 690 (EXECUTIVE ENGINEER, NATIONAL HIGHWAY DIVISION, BALASORE AND OTHERS versus REGIONAL PROVIDENT FUND COMMISSIONER, BHUBANESWAR)", the Division Bench of Orissa High Court, while dealing with a case arising under the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, took the view that the Works Department of a Government where the contractors employed their workmen in which, the principal employer only had a check control regarding the quality, held that according to the specifications, the employees working under the contractors cannot be held to be employees of the Works Department nor can it be held that the said Department was the principal employer. As the question arose in that judgment related to the coverage of the employees of a contractor under the provisions of the Employees' Provident Funds Act and in the light of the fact that such employment was not directly made by the Works Department, there is no scope for applying the said decision to the facts of this case.

39. In one another decision reported in "1973 LAB.I.C. 553 (SUPERINTENDING ENGINEER, NATIONAL HIGHWAY PROJECT, BHUBANESWAR versus BAIDHAR LENKA AND ANOTHER)", another Division Bench of the Orissa High Court, while dealing with a case relating to 'Roller-helper' in the Department of the National Highway Projects under the Works and Transport Department of the Government of Orissa, wherein, the concerned person approached the Labour Court under Section 33-C(2) of the Industrial Disputes Act claiming certain benefits, the Division Bench, in the light of the decision prevailing then, as to what is an 'industry' as held by the Hon'ble Supreme Court in "AIR 1970 SC 1407 (S.J.HOSPITAL, NEW DELHI versus K.S.SETHI)", held that the National Highway Project was carried on as part of sovereign function of the State Government and that the same was not an 'industry' and consequently, the concerned person cannot be termed as 'workman' coming within the provisions of the Industrial Disputes Act. This Division Bench judgment of the Orissa High Court will have to be analysed in the light of the subsequent decisions of the Hon'ble Supreme Court which had dealt with the issue in detail. We shall deal with the same at the appropriate stage when we discuss about the later decisions.

40. In the judgment reported in "(2001)9 SCC 713 (STATE OF GUJARAT AND OTHERS versus PRATAMSINGH NARSINGH PARMAR)", the Hon'ble Supreme Court made it clear that whenever a dispute arises as to whether a particular establishment or part of it wherein appointment was made, is an 'industry' or not, it would be for the person concerned who claims the same to be an 'industry', to give positive facts for coming to the conclusion that it constitutes "an industry". The Hon'ble Supreme Court observed that ordinarily, a department of the government cannot be held to be an industry and rather it is a part of the sovereign function. In such circumstances, though it was contended that the dismissal was vitiated for non-compliance of

25-F of the Industrial Disputes Act, in the light of the assertion and denial made by the state in the counter affidavit where a stand was taken that the Forest Department cannot be held to be an industry, it was held that the person concerned who was employed as a clerk governed by a set of rules provided under the proviso to Article 309 of the Constitution of India and for lack of necessary details furnished by the concerned workman, the decision of the High Court in holding that the Forest Department is an 'industry' was erroneous.

41. One other decision which was strongly relied upon by Thiru A.L.Somayaji is the judgment reported in "1983(1) LLJ 309 (STATE OF PUNJAB versus KULDIP SINGH AND ANOTHER)". It is a Full Bench Judgement of Punjab and Haryana High Court. The Full Bench was dealing with a question as to whether the national communication system like National and State Highways and their maintenance can be construed as the involvement of the state in a trade or business activity or in any case something analogous thereto, even if the latter aspect is viewed with the widest liberality in order to bring the said activity under the definition of 'industry' under Section 2(j) of the Industrial Disputes Act. The Full Bench was of the view that the establishment construction and maintenance of national and state highways are all essential functionary of the government which cannot be left to private enterprise and therefore, such activities, such as network of communication system, defence system were all sovereign functions of the state , which cannot be passed on to the whimsicalities of private individuals or Corporations. So holding, the Full Bench was of the view that such departments of the Highways would not come within the ambit of ' industry' as defined under the provisions of the Industrial Disputes Act.

42. As against the above said views, there is one other judgment of the Hon'ble Supreme Court reported in "(1999)1 SCC 596 (LAL MOHAMMAD AND OTHERS versus INDIAN RAILWAY CONSTRUCTION CO.LTD., AND OTHERS)". That was a case, where the question arose as to whether a project called 'Righand Nagar Project' of the Indian Railway Construction Company Limited would fall within the definition of "industrial establishment" governed by Chapter V-B of the Industrial Disputes Act and consequently, the workmen concerned therein would be covered by Section 25 (N) sub section (1) of the said Act. Dealing with the said issue, the Hon'ble Supreme Court took the view that in order to come within the definition of 'factory' as defined under Section 2(m) of the Factories Act, no fixed site was necessary and that even 'open land' can also be a part of the premises. The Hon'ble Supreme Court dealt with the said question and held as under in para 17.

"17. It is difficult to accept this contention. It is true that the word "premises" as found in the definition must have a fixed site but as held by the Constitution Bench Judgment of this Court in Ardeshir H. Bhiwandiwala (AIR 1962 SC 29), the term "premises" not only covers building but even open land can also be a part of the premises. It is easy to visualise that when a railway line is to be constructed over an area of 54 kms, it cannot be constructed overnight. The whole exercise would be carried out in a phased manner. For laying down a railway line, a number of workmen, supervisors and other clerical staff will have to attend the site where the railway line is to be laid. That site on which the railway line is to be laid will necessarily have space for storage of loose rails, sleepers, bolts etc. All these

articles will have to be laid and fixed on a given site before any part of the railway tract becomes ready. Consequently, construction of a railway line would necessarily imply fixed sites on which such construction activity is carried on, in a phased manner. Every time when such construction activity is carried on, it must necessarily be on a given fixed site where all the workmen concerned would work for the purpose of laying down a railway line at that site. Thus, even though the railway line is to be laid over 54 kms of land, every part of the said land would consist of a "factory" at a given point of time as from time to time in a phased manner, the entire railway line will have to be laid. Once the entire work is finished, then a stage would be reached when the construction activity would come to an end and the premises thereof may cease to be a "factory" but so long as construction work is being carried out in phases, every part of the land on which such construction activity takes place would form a part and parcel of the "premises" as such. A railway line cannot be laid except on a fixed site. It is not, therefore, possible to accept the submission of learned Senior Counsel, Shri Dave that the Rihand Nagar Project which was to carry out the construction work of a railway line up to 54 kms had no fixed site to operate upon and therefore, was not a "premises". ..."
(Emphasis added)
43. Again, while dealing with the question as to whether the laying of railway line can be construed as a "manufacturing activity", the Hon'ble Supreme Court has held as under in para 18.
"18. ..... It cannot be disputed that while railway lines are being constructed on a given site, no article or substance is being made or repaired, maintained, finished etc. However, the only relevant clause of the definition which has to be seen is whether at the Rihand Nagar Project of the respondent-Company, the process of construction of a railway line amounted to adapting any article or substance with a view to its use. It cannot be seriously disputed that raw materials like railway sleepers, bolts and loose railway rails when bought by the respondent-company from the open marked and brought on the site were articles visible to the eyes and were moveable articles. These articles were adapted for their use. Their use was for ultimately laying down a railway line. In that process, sleepers, bolts and rails would get used up. If that happens, the definition of " manufacturing process" dealing with adaptation of these articles for use would squarely get attracted. However, Shri Dave, learned counsel for the respondent, submitted that the ultimate product of this exercise or process is the bringing into existence a railway track which is embedded in the earth which cannot be sold, transported, delivered or disposed of like a moveable property. To that extent, Shri Dave is right. However, as the definition is worded, it cannot be said of necessity that any end product which results after adapting any raw material, article or substance "with a view to its use" must necessarily result into a moveable final product or a commodity. ...."
"..... We, therefore, are not in a position to sustain even the second reason given by the High Court in the impugned judgment to the effect that no "manufacturing process" was being carried out in the project in question. Even accepting the contention of learned counsel, Shri Dave for the respondent that the final product, namely, construction of a railway line embedded in the earth was not the subject matter of the sale, transfer, delivery or disposal, still the raw materials which were adapted for their use

with a view to constructing a railway line which was the final product could be said to have fallen within the sweep of the definition of the term "manufacturing process" as found in Section 2(k) of the Factories Act. Once that conclusion is reached, the result becomes obvious. All the appellant-workers would squarely attract the definition of the term "workmen" as found in Section 2(l) of the Factories Act as they were working for remuneration in a manufacturing process carried out by the Project in question. It must, therefore, be held that all the requirements of the term "factory" as defined by Section 2(m) of the Factories Act are satisfied on the facts of the present case."
(Emphasis added)
44. In yet another judgment reported in "(2000)3 SCC 224 (MUNICIPAL CORPORATION OF DELHI versus FEMALE WORKERS (MUSTER ROLL) AND ANOTHER)" a question arose as to whether the 'activity of Delhi Municipal Corporation in undertaking construction, laying and repairing of roads and digging of trenches, would come within the definition of ' industry' and whether the dispute between the workmen and the Corporation will have to be thrashed under the provisions of the Industrial Disputes Act'. The Hon'ble Supreme Court, dealt with the said issue and the ratio has been set out in para 36 of the judgment which is to the following effect:
"36. Taking into consideration the enunciation of law as settled by this Court as also the High Courts in various decisions referred to above, the activity of the Delhi Municipal Corporation by which construction work is undertaken or roads are laid or repaired or trenches are dug would fall within the definition of "industry". The workmen or, for that matter, those employed on muster roll for carrying on these activities would, therefore, be "workmen" and the dispute between them and the Corporation would have to be tackled as an industrial dispute in the light of various statutory provisions of the industrial law, one of which is the Maternity Benefit Act, 1961. This is the domestic scenario. Internationally, the scenario is not different."
(Emphasis added)
45. In the Judgment reported in "(1988)2 SCC 537 (DES RAJ AND OTHERS versus STATE OF PUNJAB AND OTHERS)", the Hon'ble Supreme Court dealt with a case of the Irrigation Department of the State of Punjab and by applying the 'Dominant test' evolved by the Hon'ble Supreme Court in the oft quoted judgment in "Bangalore Water Supply and Sewerage Board case" reported in (1978)2 SCC 213, it was held that the Irrigation Department of the State Government is an 'industry' within the meaning of Section 2(j) of the Industrial Disputes Act. While dealing with the said issue, the Hon'ble Supreme Court had occasion to consider the Full Bench judgment relied upon by Mr.A.L.Somayaji, learned Senior counsel, reported in "1983(1) LLJ 309" (cited supra) which was followed by a Full Bench of the same High Court, reported in "1984 CLJ 349 (OM PRAKASH versus EXECUTIVE ENGINEER, SYL, KURUKSHETRA)". While dealing with the issue involved in that case, the Hon'ble Supreme Court decided the issue in the anvil of the "Dominant Nature" test set out by the Hon'ble Supreme Court in "Bangalore Water Supply and Sewerage Board case" reported in (1978)2 SCC 213. The Dominant Nature test as set out in the said judgment is to the following effect:-
"The dominant nature test:
(a) Where a complex of activities, some of which qualify for exemption, others not, involves employees on the total undertaking, some of

whom are not "workmen" as in the University of Delhi Vs. Ram Nath (19 64(2) SCR 703) or some departments are not productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in the " Corporation of Nagpur (1960(2) SCR 942)" will be the true test. The whole undertaking will be "industry" although those who are not " workmen" by definition may not benefit by the status.

(b) Notwithstanding the previous clauses, sovereign functions, strictly understood, (alone) qualify for exemption, not the welfare activities or economic adventures undertaken by government or statutory bodies.

(c) Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within Section 2(j).

(d) Constitutional and competently enacted legislative provisions may well remove from the scope of the Act categories which otherwise may be covered thereby."

(Emphasis added)

Therefore, applying the above said test, the Hon'ble Supreme Court proceeded to hold that the Irrigation Department of the State would fall within the definition of 'industry' and therefore, the provisions of the Industrial Disputes Act would get attracted.

46. Again, in the judgment reported in "(1998)3 SC 237 (ALL INDIA RADIO versus SANTOSH KUMAR AND ANOTHER)", the Hon'ble Supreme Court held that 'All India Radio and Doordarshan' would fall within the definition of 'industry' under Section 2(j) of the Industrial Disputes Act.

47. In the judgment reported in "(2000)8 SCC 61 (AGRICULTURAL PRODUCE MARKET COMMITTEE versus ASHOK HARIKUNI AND ANOTHER)", the Hon'ble Supreme Court has dealt with the question as to what activity of the State could be considered as 'sovereign and non sovereign functions'. The legal position has been clearly set out in para 21 of the said judgment, to the following effect:-

"21. In other words, it all depends on the nature of power and manner of its exercise. What is approved to be "sovereign" is defence of the country, raising armed forces, making peace or war, foreign affairs, power to acquire and retain territory. These are not amenable to the jurisdiction of ordinary civil Courts. The other functions of the State including welfare activity of State could not be construed as "sovereign" exercise of power. Hence, every governmental function need not be "sovereign". State activities are multifarious, from the primal sovereign power, which exclusively inalienably could be exercised by the sovereign alone, which is not subject to challenge in any civil court to all the welfare activities, which would be undertaken by any private person. So merely if one is an employee of statutory bodies would not take it outside the Central Act. If that be so then Section 2(a) of the Central Act read with Schedule I gives large number of statutory bodies which should have been excluded, which is not. Even if a statute confers on any statutory body, any function which could be construed to be 'sovereign' in nature would not mean every other functions under the same statute to be also sovereign. The court should examine the statute to sever one from the other by comprehensively examining various provisions of that statute. In interpreting any statute to find if it as "industry" or not

we have to find its pith and substance. The Central Act is enacted to maintain harmony between employer and employee which brings peace and amity in its functioning. This place and amity should be the objective in the functioning of all enterprises. This is to the benefit of both the employer and employee. Misuse of rights and obligations by either or stretching it beyond permissible limits have to be dealt with within the framework of the law but endeavour should not be in all circumstances to exclude any enterprise from its ambit. That is why courts have been defining "industry" in the widest permissible limits and "sovereign" functioning within its limited orbit."
(Emphasis added)
48. Yet another decision of the Hon'ble Supreme Court, which had dealt with the question as to what kind of activities of the State could be characterized as 'sovereign functions' is the one reported in "(1996)2 SCC 293 (CHIEF CONSERVATOR OF FORESTS AND ANOTHER versus JAGANNATH MARUTI KONDHARE
AND OTHERS)". In the said decision, the Bangalore Water Supply and Sewerage Board case" was also referred and the position has been stated as under in paragraphs 7 and 8:
"7. As per the Bangalore water Supply case (1978)2 SCC 213), sovereign functions "strictly understood" alone qualify for exemption, and not the welfare activities or economic adventures undertaken by the Government. This is not all. A rider has been added that even in the departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to be an industry. As to which activities of the Government could be called sovereign functions strictly understood, has not been spelt out in the aforesaid case.
"8. Ms.Jaising, however, urges that as the majority had accepted the test explained in the Corpn. Of the City of Nagpur VS. Employees (1 960 (2) SCR 942), we should note what was Stated about sovereign functions in that decision. In that judgment this aspect has been dealt at pp.953 to 955 of the Report. The Bench of that case first noted the rival contention advanced in this regard, which by the learned counsel for the Corporation was to enlarge the scope of these functions as to comprehend all the welfare activities of a modern State, whereas the learned counsel for the respondents sought to confine them to what are aptly termed "the primary and inalienable functions of a constitutional government". In support of the contentions advanced reference was made to Holland's Jurisprudence as to which it was observed by the Bench that the same had no relevance. The Bench then referred to what was stated by Lord Watson in Coomber V. Justices of Berks (1883-84 (9) AC 61), in which, the functions such as administration of justice, maintenance of order and repression of crime were described among the primary and inalienable functions. Reference was then made to the dissenting judgment of Issacs, J. in Federated State School Teachers' Assn. of Australia V. State of Victoria (1929 (41) CLR 569), in which the learned Judge stated as below at p.585:
"Regal functions are inescapable and inalienable. Such are the legislative power, the administration of laws, the exercise of the judicial power. Non-regal functions may be assumed by means of the legislative power. But when they are assumed the State acts simply as a huge corporation, with its legislation as the charter. Its action under the legislation, so far as it is not regal execution of the law is merely analogous to that of a private

company similarly authorised."
The Bench thereafter observed that the aforesaid clearly mark out the ambit of the regal functions as distinguished from the other powers of a State. This shows that as per the Corpns. of Nagpur case, those functions alone which are inalienable can be called sovereign. Ms.Jaising would like us to take the same stand."
(Emphasis added)
In para 12, the Hon'ble Supreme Court held that the dichotomy of sovereign and non sovereign functions does not really exist and that it would depend upon the nature of the power and the manner of its exercise. Ultimately, in para 13, the Hon'ble Supreme Court has stated the legal position as under:-
"13. The aforesaid shows that if we were to extend the concept of sovereign function to include all welfare activities as contended on behalf of the appellants, the ratio in Bangalore Water Supply case would get eroded, and substantially. We would demur to do so on the face of what was stated in the aforesaid case according to which except the strictly understood sovereign function, welfare activities of the State would come within the purview of the definition of industry; and, not only this, even within the wider circule of sovereign function, there may be an inner circule encompassing some units which could be considered as industry if substantially severable."
(Emphasis added)
49. From the above referred to decisions, we can easily discern that all functions of the State need not necessarily be sovereign in nature, merely because such functions are either organised or administered by the State. In fact, in the Bangalore Water Supply case, the Hon'ble Supreme Court made it clear that while applying the dominant nature test, even in the departments discharging sovereign functions if there are units which are industries and they are substantially severable, they can be considered to be an industry to come within Section 2(j) of the Industrial Disputes Act.
50. Now coming to the decision of the Division Bench of Orissa High Court, reported in 1973 LIC 553 (cited supra), in the light of later decisions of the Hon'ble Supreme Court as narrated above, this decision can no longer be followed.
51. Going by the dictum of the Hon'ble Supreme Court reported in "(2000)8 SCC 61 (AGRICULTURAL PRODUCE MARKET COMMITTEE versus ASHOK HARIKUNI AND ANOTHER)", the ratio can be deduced to the effect that the Court should examine the statute to sever one from the other by comprehensively examining various provisions of that statute and in interpreting any statute to find if it is 'industry' or not, one has to find its pith and substance.
By and large it was pointed out that sovereign functions may cover its legislative functions, administration of law, eminent domain, maintenance of law and order, internal and external security, grant of pardon and such other analogous functions. The theory of inalienableness of sovereign functions has also been stressed by the Hon'ble Supreme Court.
52. In the anvil of the above legal position, when the case on hand is examined, we find that the 'Gang Mazdoors' were employed initially on temporary basis and later their services were regularised after completion of the required period of probation. The nature of work was nothing but the maintenance of the roads at regular intervals. The Gang Mazdoors after their regularisation, were fixed in the time scale of pay. The Gang Mazdoors who were employed in the Work Charged Establishment for execution of specific

works and projects on completion of the work for which they were recruited, were being transferred from old works to new works and they continued in service without any break.

53. In fact, when G.O.Ms.371 dated 19-8-1997 came to be issued for recruitment of the 'Gang Mazdoors' in 9813 posts, it was pointed out that employment of such 'Gang Mazdoors' should preferably be made from the villages which are adjacent to the road margins, that such criteria was laid inasmuch as, the maintenance of roads, cutting of tree branches, repairing work to be undertaken could all be done only by engaging such local persons hailing from such adjacent villages. It was also stated therein that by providing scope for such engagement, some job opportunities can be extended to the poor local villagers. From all the above said factors, it can be culled out that the nature of jobs performed by the Gang Mazdoors were purely manual and it did not require any special skill to attend to such jobs. What all required for a Gang Mazdoor, is, a good physic and easy availability in order to upkeep and maintain the highways in a proper condition.

54. As far as the nature of job performed by the Gang Mazdoor is concerned, it can be easily equated to the principles set out in the judgment of the Hon'ble Supreme Court reported in "(1999)1 SCC 596 (LAL MOHAMMAD AND OTHERS versus INDIAN RAILWAY CONSTRUCTION CO.LTD. AND OTHERS)", wherein, the Hon'ble Supreme Court dealt with a case in respect of a 'Railway construction Company'. We find the job of a Gang Mazdoor to be more or less identical. That was a case where the concerned workmen were employed in a project of construction of a railway line of 54 kms known as 'Rihand Nagar Project' in the state of Uttar Pradesh. Dealing with the said issue, the Hon'ble Supreme Court specifically considered the definition of 'industrial establishment' along with Section 2(m) of the Factories Act and held that even an open land can also be a part of the premises and that the construction or laying of a railway line over an area of 54 kms, with the aid of a number of workmen of different categories on the very site on which, the railway line is to be laid would by itself satisfy the definition of 'fixed site' in order to call the said site a 'factory'. It was further held that even though no article or substance was being made or repaired, maintained, finished, etc., in the course of construction of a railway line, yet it can be construed that the process of construction of railway line amounted to adapting any article with a view to its use and thereby making it a "manufacturing activity". Similarly in the judgment reported in (2000)3 SCC 224 (MUNICIPAL CORPORATION OF DELHI versus FEMALE WORKMEN (MUSTER ROLL) AND ANOTHER), the Hon'ble Supreme Court held that the construction work undertaken or road laid or repaired or trenches dug would fall within the definition of "industry".

55. Adopting the above said reasoning applied to the construction of a railway line carried on by the Government of India organization, as well as laying of roads by the Municipal Corporation of Delhi, to the facts of this case, it will have to be held that the maintenance of road and the allied activities which were carried out by the ' Gang Mazdoors' in a particular stretch of road with the aid of certain tools coupled with the nature of job performed by them would certainly make it a 'manufacturing process' carried out in a fixed site and thereby bringing it within the four corners of the definition of ' industrial establishment' as defined under Chapter V(B) of the Industrial Disputes Act.

56. Having regard to such nature of job performed by the Gang Mazdoors in the Department of Highways, we have no difficulty in reaching a conclusion that such industrial activity was separable from the Regal functions of the State and thereby the application of the provisions of the Industrial Disputes Act automatically comes into play.

57. The above said conclusion of ours is also supported by the very stand taken by the State in G.O.Ms.No.160 dated 5-9-2002. While discussing as to what are the distinct features as between a sovereign and non-sovereign functions, earlier, we pointed out that the Hon'ble Supreme Court in various decisions made it clear that a sovereign function is always an 'inalienable' one. Therefore, when the action of the State in abolishing the posts of Gang Mazdoors came to be made under G.O.Ms.No.160, dated 5-9-202, we find in para 5 of the said Government Order, the State Government itself stated that while the salary part of the expenditure on Gang Mazdoors was on the high side, the maintenance of the said highways can be carried out by entrusting the same with the private contractors by formulating a scheme. Therefore, while the State Government wanted to abolish the posts of Gang Mazdoors, in the same breadth, it decided that such works which were hitherto carried on by the Gang Mazdoors could be entrusted to private contractors and thereby, it was virtually, admitted by the State that the job of road maintenance was not inalienable. In other words, by its own admission in the impugned Government Order, namely, G.O.Ms.No.1 60, dated 5-9-2002, the State Government tacitly admitted that the job of Gang Mazdoors could be equally performed by private parties by entering into separate contracts. When such a position is indisputably accepted by the State Government, there is no difficulty in holding that the job of a Gang Mazdoor for maintaining the road can never be characterised as a sovereign function of the State in order to exclude the same from the application of the Industrial Disputes Act. We, therefore, hold that the provisions of the Industrial Disputes Act are applicable to the establishment, viz., the Department of Highways of the State of Tamil Nadu, dealing with the construction and maintenance of roads and the Gang Mazdoors who were employed in such maintenance work, were all workmen under the provisions of the Industrial Disputes Act. The above said conclusion leaves us to the consequential question as to whether there was any violation of the provisions of Industrial Disputes Act in order to grant the necessary relief to the Gang Mazdoors.

58. On this question, Ms.R.Vaigai, learned counsel appearing for the petitioners, contended that the various orders of termination were issued after the issuance of G.O.Ms.No.160, dated 5-9-2002, that while issuing the said orders of termination, none of the provisions of Industrial Disputes Act, which required compliance were taken into account or complied with.

59. The learned counsel contended that the termination orders issued to 9728 Gang Mazdoors would amount to retrenchment as defined under Section 2(oo) of the Industrial Disputes Act, that in the light of the fact that such retrenchment related to an industrial establishment in which more than one hundred workmen were employed on an average per working day for the preceding twelve months to the date of retrenchment, Chapter V- B of the Industrial Disputes Act also get attracted. The learned counsel would further contend that inasmuch as, no prior permission of the Government or such authority as stipulated under Section 25-N (2) falling under Chapter V-B had been obtained and further since no retrenchment compensation as prescribed

under Section 25-F was also paid, the whole lot orders of termination issued to 981 3 Gang Mazdoors would become ab initio void.

60. As far as the non-compliance of the various provisions contained in Chapter V-B of the Industrial Disputes Act or 25-F and 25-N of the said Act, the same is not in controversy. The total number of Gang Mazdoors who came to be terminated by identical orders of termination dated 7-9-2002 pursuant to G.O.Ms.No.160, dated 5-9-2002 is concerned, the same is also not in dispute. In such factual situation, there is no more to be examined as to the controversy centering around the above said legal position. When once the State Government took the stand that the provisions of the Industrial Disputes Act were not applicable and when the non-compliance of the various stipulations contained in either Chapter V-B or Section 25(F) of the Industrial Disputes Act cannot also be disputed, it will have to be inevitably held that the non-employment of the entire lot of Gang Mazdoors which squarely fall within the definition of Section 2(oo) of the Industrial Disputes Act was wholly illegal and consequently the only other question to be considered as to what is the relief to be granted to the Gang Mazdoors?

61. Before going into the above said question, we feel that the additional question now raised on behalf of the State in the present Writ Petitions, i.e., "whether the very employment of the Gang Mazdoors was in accordance with law and whether such employment should be held to be void and therefore, such an illegal appointment can never be restored in these Writ Petitions?" needs examination.

62. The above said contention is based on the submission that the initial induction of the Gang Mazdoors itself was contrary to the rules and if that be so, accepting their claim would result in an illegality being given a seal of approval or restoration of an illegal action. It was contended that G.O.Ms.No.371 itself was contrary to the rules framed under Article 309 of the Constitution and it was not an acceptable system of selection. It was further contended that the exemption of Employment Exchange rule was not made prior to the paper publication calling for the applications. It was also contended that the power under Rule 48 of the Tamil Nadu State and Subordinate Service Rules cannot be invoked for issuing the relaxation of Rules 4 and 5 of the Basic Recruitment Rules. It was, therefore, contended that the original appointment itself was a nullity.

63. In support of the above said submissions, reliance was placed upon the judgment reported in "(1997)2 SCC 1 (ASWANI KUMAR AND OTHERS versus STATE OF BIHAR AND OTHERS), 1973(2) LLJ 180 (T.C.SREEDHARAN PILLAI versus STATE OF KERALA AND OTHERS), AIR 1992 SC 789 (DELHI DEVELOPMENT HORTICULTURE EMPLOYEES' UNION versus DELHI ADMINISTRATION, DELHI AND OTHERS), AIR 1966 SC 828 (GADDE VENKATESWARA RAO versus GOVERNMENT OF ANDHRA PRADESH AND OTHERS), 2004 Wr.L.R.434 (UNION OF INDIA, UNION TERRITORY OF PONDICHERRY, REP. BY THE CHIEF SECRETARY TO GOVT. AND TWO OTHERS versus ILANGO, ETC.,), 2004(3) CTC 549 (STATE OF UTTARANCHAL, THROUGH COLLECTOR, DEHRADUN AND ANOTHER versus AJIT SINGH BHOLA AND ANOTHER) and 2002(4) CTC 385 (L.JUSTINE AND ANOTHER versus THE REGISTRAR OF COOP.SOCIETIES, CHENNAI AND TWO OTHERS)".

64. In the judgment reported in "(1997)2 SCC 1 (ASWANI KUMAR AND OTHERS versus STATE OF BIHAR AND OTHERS)", the Hon'ble Supreme Court considered the appointment of certain employees by the Chairman of a Selection

Committee, which appointments were over and above the posts which were created to implement the scheme in different categories. The Hon'ble Supreme Court, as a matter of fact, found that while the budgeted expenditure was for recruitment of 2250 employees in the sanctioned posts, the excess recruitment of 6000 employees by the Chairman of the Selection Committee without there being any vacancies to receive them was wholly unauthorised, incompetent and void. It was also found that the whole lot of recruitment was in violation of established norms and procedure for recruiting Class-III and Class-IV employees as laid down from time to time. It was ultimately held that the candidates appointed in an unauthorised manner against non-existing vacancies can neither be confirmed nor regularised inasmuch as the very appointment itself was a nullity.

65. From the Judgment reported in "1973(2) LLJ 180 (T.C. SREEDHARAN versus STATE OF KERALA AND OTHERS)", the Full Bench of the Kerala High Court, while dealing with Rule 39 of the Kerala State and Subordinate Service Rules which is analogous to Rule 48 of the Tamil Nadu State and Subordinate Service Rules, upheld the validity of the said Rule, rejecting the various contentions as regards the pitfalls of the said rules in the event of the State Government invoking the said Rule. However, the Full Bench took the view that the action of the Government in passing a Government Order, whereby, it sought to restore the rank of all the Assistants who joined the Secretariat between 17-1 2-1958 and 13-11-1963 and who were superseded by their juniors for promotion to Grade I for want of test qualification, was not a justifiable basis for a classification inasmuch as there was no time fixed for the persons concerned to acquire the test qualification and get promoted to Grade I in order to be eligible for the benefit of restoration.

66. In the judgment reported in "AIR 1992 SC 789 (DELHI DEVELOPMENT HORTICULTURE EMPLOYEES' UNION versus DELHI ADMINISTRATION, DELHI AND OTHERS)", the Hon'ble Supreme Court while holding that employment given to certain persons under the schemes which were evolved to provide income for those who were below the poverty line and particularly during the periods when they are without any source of livelihood, such employment cannot be extended to the level of ultimate regularisation. In that context, the Hon'ble Supreme Court also expressed its displeasure as to the manner in which, several recruitments were made de-hors the Employment Exchanges which were characterised illegal employment market and the recruitments made in such cases or characterised as back door entry. In fact, the question for consideration in the said judgment was as to whether the persons employed under Jawaharlal Rojgar Yojana scheme, can seek for regularisation merely because they have put in 240 days of service. The Hon'ble Supreme Court rejected the claim of such persons.

67. In the judgment reported in "AIR 1966 SC 828 (GADDE VENKATESWARA RAO versus GOVERNMENT OF ANDHRA PRADESH AND OTHERS)", the Hon'ble Supreme Court held as a proposition of law that after setting aside an order of the Governor would result in restoration of an illegal order, the Court should not exercise its extraordinary discretionary power in such circumstances. Similar position was stated in the judgment reported in "2004(3) CTC 549 (STATE OF UTTARANCHAL, THROUGH COLLECTOR, DEHRADUN AND ANOTHER versus AJIT SINGH BHOLA AND ANOTHER)".

68. In the judgment reported in "2004 Wr.L.R.434 (UNION OF INDIA, UNION TERRITORY OF PONDICHERRY, REP. BY THE CHIEF SECRETARY TO GOVT. AND TWO OTHERS versus ILANGO, ETC.,)", the Division Bench of our High Court applied the law laid down by the Hon'ble Supreme Court reported in AIR 1990 SC 789 in respect of a claim made by temporary employees of the Legislative Assembly Department of Government of Pondicherry whose services were terminated as their services were not recruited applying the regular recruitment rules not in sanctioned posts.

69. As far as the other Division Bench of our High Court reported in "2002 (4) CTC 385 (L.JUSTINE AND ANOTHER versus THE REGISTRAR OF COOP.SOCIETIES, CHENNAI AND TWO OTHERS)", that was a case of various employees employed in different co-operative societies at different points of time without reference to Employment Exchanges and without observing the conditions regarding the educational qualifications and technical qualifications relating to co-operative training and beyond the prescribed cadre strength, were declared as illegal appointments and that such appointments cannot be upheld in exercise of the discretionary jurisdiction under Article 226 of the Constitution. It was further held that mere completion of 480 days of service of those employees will not make them eligible to invoke the provisions of the Tamilnadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act 1981, inasmuch as, their appointment itself was illegal and unauthorised.

70. The above said Division Bench judgment has also been upheld by the Hon'ble Supreme Court in Civil Appeal No.1413 of 2003, etc., dated 28-7-2004. Before the Division Bench, G.O.Ms.No.86 dated 12-3-200 1 was the subject matter of consideration. Under the said G.O., exemption was granted by the Government in regard to the condition relating to the statutory obligation on the part of the co-operative societies to notify the Employment Exchange as regards the existing vacancies. While dealing with the said issue, the Division Bench held that G.O.Ms.No.86 dated 12-3-2001 got the effect of only authorising regularisation of the employees for the period between 8-7-1980 to 11-3-20 01 exempting the notification of Employment Exchanges. The Division Bench, therefore, held that such exemption granted cannot be extended to the extent of violating Sub Rule 1 of the Rule 149 of the Tamil Nadu Cooperative Societies Rules, which require certain other requirements to be satisfied before making any fresh recruitment. It was therefore, held that in the event of those employees recruited between 8 -7-1980 and 11-3-2001 in the various co-operative societies satisfying all other requirements such as existence of vacancies, qualifications, etc., by virtue of G.O.Ms.No.86 dated 12-3-2001, the requirement informing the vacancies to the Employment Exchange need not be taken cognizance of. While considering the said issue, the Hon'ble Supreme examined the question as to whether the State had the requisite authority to direct regularisation of the employees of the co-operative societies by reason of the G.O.Ms.No.86 dated 12-3-2001. Ultimately, the Hon'ble Supreme Court took the view that neither Section 182 or 1 70 of the Co-operative Societies Act or Article 162 of the Constitution would enable the State Government to issue such an exemption as has been granted in G.O.Ms.No.86 dated 12-3-2001. Ultimately it was held that if the State had no power to issue the said G.O.Ms.No.86 dated 12-3-2001, the same must be held to be a nullity. The Hon'ble Supreme Court, ultimately,

upheld the order of the Division Bench.
71. In the additional submission now made, the State wants to virtually attack its own orders on the ground that the same does not stand the scrutiny of statutory provisions. The attack was mainly directed towards G.O.Ms.No.184 dated 29-5-1997 and G.O.Ms.No.371 dated 19-8-1997. In G.O.Ms.No.184 dated 29-5-1997, the requirement of staff strength was determined at 14,872 and after taking note of the already filled up posts, the vacancy position was determined at 9813. It was also decided to remove the ban on recruitment as made in G.O.Ms.No.8 15 dated 5-6-1992. As on that date about 764 persons were working on daily wage basis and their service was directed to be regularised. It was further directed to fix the salary of the Gang Mazdoors to be recruited at a sum of Rs.1500/- in the first year and to fix them in the time scale from the second year. Necessa ry additional funds required to an extent of about Rs.15 crores was also directed to be allocated. The said Government Order was issued after getting the concurrence of the Finance Department as per its communication dated 29-5-19 97. In G.O.Ms.No.371 dated 19-8-1997, while prescribing the procedure for recruitment in respect of the vacancies created under G.O.Ms. No.184 dated 29-5-1997, two vital exemptions came to be granted. The said exemptions related to notifying all the vacancies to the Employment Exchange and also age relaxation. Both the requirements were contemplated under the Tamil Nadu Basic Service Rules. The exemption came to be granted by invoking general Rule 48 of the Tamil Nadu State and Subordinate Services Rules.
72. Under Rule 5(1) of the Special Rules for Tamilnadu Basic Service, any candidate for appointment by direct recruitment to any of the posts other than those in Clauses I and II must not have completed 30 years of age on the date of appointment. Under Rule 4(a), the manner of selection of direct recruitment has been provided, by which, the appointing authority should call for panel of names from the Employment Exchanges concerned, informing that office, of the anticipated vacancies of the posts and the qualifications prescribed for such posts. It also provides that if the appointing authority finds that none of the candidates in the panel sent by the Employment Exchanges is suitable for appointment, he can seek for a second list from the Employment Exchange. Only in the event of the concerned Employment Exchange expressing its inability to sponsor qualified candidates, the appointing authority can resort to make such other appointments after duly informing his immediate superior as well as concerned Employment Exchanges. Rule 48 of the Tamil Nadu State and Subordinate Rules enables the State Government to grant exemptions. For better appreciation of the said Rule, the same requires extraction:
"48. Notwithstanding anything contained, in these rules or in the special rules, the Governor shall have power to deal with the case of any person or class of persons serving in a civil capacity under the Government of Tamil Nadu or of any person who has or of any class of person who have served as aforesaid or any can didate or class of candidates for appointments to a service in such manner as may appear to him to be just and equitable; provided that, where any such rule is applicable to the class of any person or class of persons, the case shall not be dealt with in any manner less favourable to him or them than that provided by that rule."
73. A close reading of Rule 48 of the Tamil Nadu State and Subordinate Services Rules read with Rule 4 and 5(1) of the Special Rules for

Tamil Nadu Basic Service, it can be seen that there is scope for the State Government to pass such orders which is required under certain specific contingencies. Mr.A.L.Somayaji, learned senior counsel, contended that what is provided under Rule 48 would be applicable only to any person or class of persons who are already in the service of the State. From a reading of the above said rule, we are unable to accept the said contention so raised on behalf of the state. In fact, the expressions, ".... or any candidate or class of candidates for appointment to a service in such manner as may appear to him to be just and equitable" makes it clear that the power vested with the Governor of the state to pass appropriate orders which would appear to him as just and equitable irrespective of any specific rule contained in the State and Subordinate Rules as well as Special Rules for Tamil Nadu Basic Servants even in regard to any appointments to be made afresh into the service of the state. Therefore, we are satisfied that under Rule 48, the Governor of the State had every power to grant such exemptions that are required under equitable and just considerations to exempt any of the stipulations contained either in the State and Subordinate Service Rules or the Special Rules of the Tamil Nadu Basic Servants. When the Government Orders which are now under attack by the very State Government which issued the above said Government Orders, viz., G.O.Ms.No.186 dated 29-5-1997 as well as G.O.Ms.No. 371 dated 19-8-1997 are perused, we find that the exemptions as regards the age relaxation under Rule 5(1) as well as the requirement of notification through Employment Exchange under Rule 4 came to be granted for certain reasons which are specifically referred to in the very same Government Orders.

74. A perusal of the G.O.Ms.No.184 dated 29-5-1997 and 371 dated 19 -8-1997 disclose that the whole exercise of ascertaining the job strength was made with a view to improve the roads of the State Highways and also their continued maintenance. As far as the Highways are concerned, there can be no two opinion that in the light of manifold increase in road traffic, both light motor vehicles, as well as, heavy motor vehicles, there is imminent need for not only improving the present road facilities provided, but also day today maintenance of those Highways. Therefore, the attempt of the State Government in making a study as to the job requirement on this aspect can never be belittled as it was done in the interest of the public at large. In that view, when the said G.O.Ms.No.184 dated 29-5-1997 is analysed, we find that by virtue of the recommendations of the committee constituted as early as in the year 1982, a creation of 10634 posts had been made long before the issuance of the above said Government Orders. As on that date, when the above said Government Order came to be issued out of 10634 posts, about 5575 posts were lying vacant. As the earlier study was made for more than a decade before, on a fresh look by the Highways Department, a further requirement of 4238 posts was noted and that is how the creation of 9813 posts came to be made under G.O.Ms.No.184 dated 29-5-1997. In fact, as per the report of the Committee of the year 1982, the requirement of Gang Mazdoors was fixed as two Mazdoors for every 8 kms length of road. It was further stated that the requirement of exemption for recruitment was needed inasmuch as, it was felt that the recruitment has to be made from among the persons available along side the highways in order to ensure that such persons attend to the road maintenance without fail. In other words, the purport of granting the exemption for recruitment through Employment Exchange was to rule out the possibility of any person from any distant area seeking for employment by

virtue of the registration in the Employment Exchange and that such employment if ultimately made may not serve the purpose as the person concerned may not make himself available for maintenance of the road. Therefore, the whole purport of granting exemption for the recruitment through Employment Exchange was stated to be for ensuring the presence of the concerned Gang Mazdoor throughout his service and that he really maintains the road in good condition at all times and thereby the moment of the vehicular traffic is unaffected under any contingencies. It was also noticed that such a move would enable the local villagers to secure employment which would incidentally provide a source of livelihood for such poor villagers. It was on that basis, the necessary relaxation in the age limit from 30 to 35 in a uniform manner was contemplated and came to be made. Thus, for the various reasons which weighed with the State Government at the relevant point of time, the above said G.O.Ms.No.18 4 dated 29-5-1997 and G.O.Ms.No.371 dated 19-8-1997 came to be issued providing for the recruitment of 9813 Gang Mazdoors by granting the required exemption to Rule 4 and 5(1) of the Special Rules for Basic Servants. In such circumstances, we are of the view that the exemption so granted cannot be held to be wholly arbitrary or unreasonable or came to be issued without necessary power vested with the State Government.

75. In the above said circumstances, when the contention now raised on behalf of the State is considered, we are constrained to state that the State Government in its desperate attempt to sustain the wholesale abolition of Gang Mazdoors, has taken the extreme stand of disowning its own Government Orders which came to be issued after due deliberations with the avowed object of not only providing employment to the needy, but also in the larger interest of the general public. We are unable to refrain ourselves from making such an observation also for the reason that such a ground was never stated by the State Government when the subsequent G.O.Ms.No.160 dated 5-9-2002 came to be issued for abolition of the posts of Gang Mazdoors. In G.O.Ms.No.160 dated 5-9-2002, the only reason given was that after the recruitment of Gang Mazdoors, after the year 1997, the salary expenditure rose to Rs.75 crores per year which additional expenditure can be avoided by entrusting the job of road maintenance with private contractors by drawing a scheme. While scrutinising the present G.O.Ms.No.160 dated 5-9-2002, by which, the abolition of the posts of existing Government Orders came to be made, we are unable to find any supporting material either in the reply statement filed by the State Government before the State Administrative Tribunal or before this Court as to what was the compelling constraints vis-a-vis the imminent requirement of proper maintenance of the highways in order to resort to total abolition of the existing Gang Mazdoors.

76. On this respect, when the reply statement filed by the State Government before the Tribunal is perused, we only find the statistical figures relating to the salary expenditure of Gang Mazdoors, as between the year 1996-1997 to 2001-2002. It was attempted to point out that as the expenditure was incurred by way of work charged establishments, the fund allocated for such work charged establishments by virtue of the increase in engagement of Gang Mazdoors in the year 1997 resulted in a substantial part of the fund allocated to have been eaten away by way of salary payment alone. It was pointed out that while the percentage of expenditure on materials vis-a-vis, the establishment component was 52% in the year 1996-97, the same got reduced to 11% in the year 2001-2002.

77. In the first place, it will have to be stated that it is not the case of the respondent State that after 1996-97, there was any subsequent increase in the recruitment of Gang Mazdoors and that that resulted in payment of higher amount by way of salary and other allowances to the Gang Mazdoors. In fact, that was not the case of any of the parties. Therefore, the strength of the Gang Mazdoors made pursuant to G.O.Ms.No.184 dated 29-5-1997 and G.O.Ms.No.371 dated 19-8-1997 remained constant from 1996-97 onwards till the posts came to be abolished under G.O.Ms.No.160, dated 5-9-2002. If the raise in the salary component was due to spiralling prices of the commodities and consequent revision of wages, for the high cost of salary structure, the Gang Mazdoors cannot be blamed. It is not for us to advise the State Government as to in what manner the requirement of materials is to be met by way of making necessary fund allotment, but on that score it can never be held that there was any lack of performance by the Gang Mazdoors in the course of discharge of their duties or for that matter, their services are to be dispensed with in an unceremonial manner as has been done by the State Government under the G.O. Ms.No.160, dated 5-9-2002.

78. The sole contention of the State Government made before the Tribunal was that the abolition of posts of Gang Mazdoors was a policy decision of the State, and the same can never be questioned by any one concerned. That apart no other valid reason was shown before the Tribunal for abolishing the 9728 of Gang Mazdoors and depriving them of their source of livelihood. It will have to be remembered that it is not the case of back door entry of Gang Mazdoors into the service of the State. It is also not the case that any appointment was made illegally which came to be subsequently sought to be regularised by issuing certain Government Orders. The very recruitment came to be made by issuing specified Government Orders and while issuing the said Government Orders, every statutory requirement was noted and wherever the exemption required the same was also issued, which exemptions were also validly made by invoking the provisions providing for grant of such exemptions. Therefore, we are unable to find fault with the manner of recruitment of Government Mazdoors made in G.O.Ms.No.184 dated 29-5-1997 and 371 dated 19-8-1997.

79. It is of course submitted by the learned Advocate General as well as Mr.A.L.Somayaji, learned senior counsel that the method of selection of selecting the persons on the basis of draw of lots is unknown to civil service jurisprudence and cannot be approved. Even though such a contention may appear to be attractive, we do not think the State can take advantage of such submissions made for the first time in course of the hearing of the Writ Petitions in the High Court. It has to be remembered that though the appointments through such method of selection had been made in the year 1997, the candidates, who had not been selected, apparently had no grievance at that stage and the selection had not been challenged by any perso n at that stage. Therefore, it is not open to the State to rake up such questions at this stage as an answer to the contentions raised by the Writ Petitions.

80. The present attempt of the State Government to condemn the above said Government Orders without any sound legal basis is alone to be condemned. Such a stand of the State Government can never be allowed to be canvassed as otherwise, there would be no consistency at all in the action of the State Government in any of its welfare measures which were pursued in the

interest of the public at large. It is difficult to fathom the motive and the logic of the manner in which the State Government seeks to attack the earlier Government Orders of 199 7. We are unable to appreciate the stand now taken by the State Government for the first time in these proceedings. It is not known why such a stand was never put forth when the case was disposed of by the State Administrative Tribunal. It can only be said that the State is desperate in its attempt to sustain its G.O.Ms.No.160, dated 5-9-20 02 in abolishing the 9728 posts of Gang Mazdoors. By the imprudent act of the State Government, it may have to now shell out a substantial sum by way of back wages alone to the Gang Mazdoors which would make a serious inroad into the exchequer of the State.

81. So far as the decisions relied upon by Shri A.L.Somayaji, learned senior counsel, it will have to be stated that all those decisions came to be rendered in a different set of facts and circumstances and therefore, those decisions will have no application to the facts of this case. In the Judgment reported in "(1997)2 SCC 1 (cited supra), though Selection Committee was constituted with one Dr.A.A.Mallick as Chairman to recruit 2250 Class III and Class IV employees on posts created to implement a scheme, the said Dr.Mallick appeared to have taken advantage of the job entrusted to the Selection Committee and appointed 6000 persons without any written orders of appointment. While the sanctioned posts were only 2250, the Chairman of the Selection Committee was not empowered to recruit 6000 employees. Therefore, 3750 employees recruited under the scheme was without any vacancies being available. The Hon'ble Supreme Court has observed that the said Dr.Mallick threw all the discretion to the winds and acted in a most arbitrary fashion adopting the principle of "pick and choose" while recruiting 6000 employees, in complete violation of the established norms and procedures for recruiting Class III and Class IV employees. It was, in those circumstances, it was held that the appointments of the whole lot of 6000 employees as made by Dr.Mallick under the ' Tuberculosis Eradication Scheme under 20-Point Programme' was ex facie illegal. Therefore, the facts involved in that case has absolutely no comparison to the facts involved here where the required step right from the stage of ascertaining the need for employment, the strength required, the vacancies available and the vacancies to be created were all done by following necessary procedure. As held by us earlier, wherever exemptions were required for fulfilling the object to be achieved, the same was also done by invoking the relevant rules. Further, the whole process, right from the stage of creation of posts, up to the stage of filling up of the posts was not carried out at the behest of any single individual in order to state that there was any malpractice in the matter of recruitment of Gang Mazdoors.

82. At the risk of repetition, it is required to be stated that the State Government never put forth such a contention at any stage while resisting the original applications before the State Administrative Tribunal.

83. As far as the Full Bench Judgment of the Kerala High Court reported in "1973(2) LLJ 180" (cited supra), in the first place, the Full Bench upheld the validity of the Rule 39 of the Kerala State and Subordinate Service Rules which is analogous to Rule 48 of the Tamil Nadu State and Subordinate Service Rules. The action of the State Government was found to be unjustified as the said Government Order lacked in material particulars, when a general exemption came to be made in respect of group of individuals. The Full Bench had noted that while the Government sought to

restore the rank of all Assistants who joined the Secretariat between 17-12-1958 and 13-11-1963 and who were superseded by their Juniors for promotion to Grade I for want of test qualification, it failed to prescribe any time limit for the persons concerned to acquire the test qualification in order to get promoted to Grade I so as to be eligible for the benefit of restoration. Since such a vital aspect came to be omitted by the State Government while issuing the Government Order, the Full Bench held that the action of the State Government in the issuance of the said Government Order cannot be sustained. In the facts and circumstances of the case where we have discussed about the imminent need which necessitated the State Government to grant necessary relaxation as regards Rule 4 and 5(i) of the Special Rules for Basic Servants, we are unable to apply the above said decision of the Full Bench of the Kerala High Court to the facts of this case.

84. As far as the judgment reported in "AIR 1992 SC 789" (cited supra), in the light of what has been stated above, there is no scope to characterise the recruitment of Gang Mazdoors involved in these Writ Petitions as having been done in a clandestine manner. In fact, all the Gang Mazdoors after their initial recruitments were placed on probation and were also subsequently regularised by fixing them in appropriate time scale of pay. Therefore, what is stated in the above stated Supreme Court judgment will not apply to the facts of this case.

85. Since as there was no illegality in the recruitment of Gang Mazdoors, the principles set out in para 17 of Judgment of the Hon'ble Supreme Court reported in AIR 1966 SC 828 (cited supra) will also have no application.

86. The Division Bench Judgment of our High Court reported in 2004 Wr.L.R.434 (cited supra) related to the termination of temporary employees whose initial entry was unauthorised and who were not given job as against any sanctioned posts. In the circumstances, the said judgment cannot also be applied.

87. As far as the Judgment reported in "2004(3) CTC 549" (cited supra), the Hon'ble Supreme Court was pleased to hold that the Court will not exercise its discretion and quash an order which appears to be illegal if its effect is to revive another illegal order. Inasmuch as, we have held that the earlier G.O.Ms.No.184 dated 29-5-1997 as well as 371 dated 19-8-1997 were all valid orders, there would be every justification in setting aside the present impugned G.O.Ms.No.160, dated 5-9-2002.

88. As far as the Division Bench Judgment reported in "2002(4) CTC 385" (cited supra), we have narrated the scope and ambit of consideration of G.O.Ms.No.86 dated 12-3-2001 which was considered by the Division Bench of this Court, which was also upheld by the Hon'ble Supreme Court. Having regard to the fact that the Hon'ble Supreme Court ultimately found that neither statutory provisions nor the Constitution enables the State Government to relax the Rule relating to recruitment being made through Employment Exchange, the said Government Order was held to be a nullity. In the case on hand, we have discussed at length about the validity of the earlier G.O.Ms.No.184 dated 29-5-199 7 as well as 371 dated 19-8-1997 and the exemptions granted therein by tracing the power to Rule 48 of the Tamilnadu State and Subordinate Services Rules which enables the Government to grant such exemptions. In such circumstances, there is no scope for applying the

above referred to Division Bench Judgment as well as the subsequent order of the Hon'ble Supreme Court to the case on hand.

89. As a result of our above discussion, we conclude that the very employment of all the Gang Mazdoors concerned in these Writ Petitions, was in accordance with law and the relevant Government Orders, viz.,G.O.Ms.No.184 dated 29-5-1997 and 371 dated 19-8-1997 were passed inconsonance with law and therefore, there is no scope to hold that the very employment was void as contended by the respondent State.

90. As far as the impugned order of the Tribunal is concerned, the Tribunal proceeded solely on the footing that the abolition of posts of Gang Mazdoors as has been done under G.O.Ms.No.160 dated 5-9-2002 was a policy decision of the State a e, in the absence of any violation of any constitutional or statutory provisions, there was no scope for interfering with the said Government Orders. The Tribunal, never touched upon the question as to the violation of the provisions of the Industrial Disputes Act while dealing with the issue. The Tribunal was of the view that each of the Gang Mazdoors should be paid a sum equivalent to six months salary to tie over the unpredictable situation in which they were placed.

91. In the light of our conclusions, viz., that the abolition of posts and the consequent termination was in violation of the provisions of the Industrial Disputes Act, the conclusion of the Tribunal based on a singular factor, namely, the policy decision of the State cannot stand. In fact, in the judgment reported in (1976)2 SCC 844 (STATE OF HARYANA versus DES RAJ), the Hon'ble Supreme Court has stated the legal position as under in para 7:

"7. Whether a post is to be retained or abolished is essentially a matter for the Government to decide. As long as such decision of the Government is taken in good faith, the same cannot be set aside by the Court. It is open to the Court to go behind the wisdom of the decision and substitute its own opinion for that of the government on the point as to whether a post should or should not be abolished. The decision to abolish the post should, however, as already mentioned be taken in good faith and be not used as a cloak or pretence to terminate the services of the person holding that post. In case it is found on consideration of the facts of a case that the abolition of the post shall only a devise to terminate the services of an employee, the abolition of the post would suffer from a serious infirmity and would be liable to be set aside. ....."

92. Going by the above said dictum of the Hon'ble Supreme Court and in the light of our conclusions made in the foregoing paragraphs, there can be no two opinion that the impugned G.O.Ms.No.160, dated 5-9-2002 was not passed in good faith with proper application of mind and whole purport of it was to simply terminate the services of Gang Mazdoors and therefore, the said Government Order cannot be sustained.

93. This leads us to the other question, namely, as to what should be the relief granted to the Gang Mazdoors? Inasmuch as, we have concluded that the very G.O.Ms.No.160, dated 5-9-2002 abolishing the posts of Gang Mazdoors was wholly illegal and invalid in law, the consequent orders of termination issued to 9813 Gang Mazdoors are also liable to be set aside and they are accordingly, set aside. The grounds which weighed with us for interfering with the above referred to Government Orders, as well as, the termination is the gross violation of the provisions of the Industrial

Disputes Act in the matter of termination orders inasmuch as we have held that the Department of Highways in which, the Gang Mazdoors came to be engaged would fall within the definition of "industry" under Section 2(j) of the Industrial Disputes Act and that the Gang Mazdoors being "workmen" under the provisions of the Industrial Disputes Act, in the light of Chapter V-B relating to the procedure to be followed in the matter of retrenchment, the action of the State in resorting to wholesale termination without following the procedure prescribed under Chapter V-B would make the order of termination non est in law. It is not only the failure of the respondent State in following the procedure prescribed under Chapter V-B of the Industrial Disputes Act, but also the requirement contained under Section 25-F of the Industrial Disputes Act relating to retrenchment of an employee. As far as the non-compliance of the above referred to provisions are concerned, there is no dispute at all inasmuch, as the contention of the State was that there was no requirement for complying with any of the provisions of the Industrial Disputes Act. When once such non-compliance of the provisions of the Industrial Disputes Act is not in controversy, the only other consequence would be reinstatement of the affected employees back into the service with all consequential benefits.

94. In this context, a few of the judgments of the Hon'ble Supreme Court are required to be referred.

95. In the judgment reported in "1984(1) LLJ 110 (KARNATAKA STATE ROAD TRANSPORT CORPORATION, BANGALORE versus SHEIKH ABDUL KHADER AND OTHERS, ETC.)", the Hon'ble Supreme Court held as under in para 13:-

"13. ..... Admittedly, the requirement of Section 25(F) of the Industrial Disputes Act had not been complied with and in these cases. Counsel for the appellant did not very appropriately dispute before us that the necessary consequence of non-compliance of Section 25-F of the Disputes Act in case where it applied made the order of termination void. The High Court, in our opinion, has therefore, rightly come to the conclusion that in these cases the order of retrenchment was bad and consequently it upheld the Award of the Labour Court which set aside those orders and gave appropriate relief. ....."

96. Again in the Judgment reported in "(1999)1 SCC 596 (LAL MOHAMMAD AND OTHERS versus INDIAN RAILWAY CONSTRUCTION CO.LTD. AND OTHERS)", the Hon'ble Supreme Court dealt with a case of an establishment to which, Chapter V-B of the Industrial Disputes Act was applicable and since compliance with the provisions of the said Chapter was not resorted to while effecting the retrenchment, the Hon'ble Supreme Court taking note of Section 25(N) of the Industrial Disputes Act which prescribed the conditions to retrenchment of the workmen wherein, under Sub Section 7, it has been stated that where no application for permission under sub Section (1) was made or where the permission for retrenchment was refused, such retrenchment should be deemed to be illegal from date on which, the notice of retrenchment was given to the workmen and the workmen would be entitled to all the benefits as if no notice had been given to them, held that the impugned notices on account of non-compliance with Section 25(N) of the Act had no legal effect and were null and void and the employer and employee relationship between the parties did not get snapped and all the appellants, therefore, continued to be in the

service of the respondent despite such null and void notices.

97. Therefore, having regard to the blatant violation of the provisions of the Industrial Disputes Act by the State Government itself who should have acted as a model employer, we have no hesitation in holding that in normal course all the employees would be entitled for not only reinstatement, but with all back wages, continuity of service and all other attendant benefits. In this context of granting the relief, one other factor is also required to be stated. The said factor would only show that financial constraints which was pleaded, though not established with acceptable materials, was, not a real or genuine factor, which stood in the way of the State Government in resorting to the wholesale dismissal.

98. Ms.R.Vaigai, learned counsel for the petitioners brought to our notice certain actions of the State Government in the matter of employment of about 15000 posts of Assistants and Junior Assistants in the various departments of Secretariat, as well as, in the various departments in different districts in temporary supernumerary posts by G.O.Ms.Nos.84 and 85 dated 4-7-2003, which temporary appointments were disbanded by issuing Government Orders in G.O.Ms.No.263 dated 21-6-2 004. Consequent upon the disbandment of various posts, the service of all the temporary Assistants and Junior Assistants who were appointed on contract basis were terminated with immediate effect. Surprisingly, by yet another Government Order in G.O.Ms.No.290 dated 23-6-2004, the Government gave a direction that the orders issued in G.O.Ms.No.263 dated 21-6-2004 stood cancelled. Viewed in the background of the above Government Orders, we can only state that the stand of the State Government with reference to G.O.Ms.No.184 dated 29-5-1997 and 371 dated 19-8-1997 is purely an after thought and a desperate attempt to sustain its imprudent act of abolition of posts as was done under G.O.Ms.No.160 dated 5-9-2002. In fact, in one of the judgments of the Hon'ble Supreme Court reported in "(1996)2 SCC 293 (CHIEF CONSERVATOR OF FORESTS AND ANOTHER versus JAGANNATH MARUTI KONDHARE AND OTHERS), a desperate argument was put forth on behalf of the State and the Hon'ble Supreme repelled the said argument in the following words in para 28:

"28. Insofar as the financial strain on the State Exchequer is concerned which submission is sought to be buttressed by Shri Dholakia by stating that in the Forest Department itself the casual employees are about 1.4 lakhs and if all of them were to be regularised and paid at the rate applicable to permanent workmen, the financial involvement would be in the neighbourhood of Rs.300 crores -a very high figure indeed. We have not felt inclined to bear in mind this contention of Shri Dholakia as the same as been brought out almost from the hat. The argument relating to financial burden is one of despair or in terrorem. We have neither been impressed by the first nor frightened by the second inasmuch as we do not intend that the view to be taken by us in these appeals should apply, proprio vigore, to all casual labourers of the Forest Department or any other Department of the Government." (Emphasis added)

99. Therefore, on an over all analysis of the stand of the State Government, we find that its various submissions are without any sound

basis and the challenge of the Gang Mazdoors to their orders of termination being well justified, in normal course, there can be no other relief to the said Gang Mazdoors except directing the respondent State to reinstate all of them with continuity of service and all other attendant benefits and even full back wages. Yet we have some hesitation regarding payment of full back wages, not because we have any doubt regarding the illegality and imprudence of the State's a misadventure but because of the financial impact. The State was obviously at fault and the individuals (albeit in thousands) were the hapless victims. However, the difficult and delicate question remains- should the entire burden be borne by the entire public of the State? It is obvious that the State Government had made some alternate arrangements for maintenance of roads by incurring certain expenditure. If the employees would be paid the entire back wages, obviously, there would be huge burden on the public exchequer. Even though the State Government is responsible for such a situation and not the employees, having regard to the facts and circumstances of the case, we feel interest of justice would be served by directing payment of back wages for a period of six months, which would roughly be equivalent to one fourth of the entire back wages, and ordered accordingly. We accordingly direct the State Government to reinstate all the Gang Mazdoors, with continuity of service , but with six months backwages.

100. In view of our above said direction to the State Government, there is no scope or necessity to grant any relief in the Writ Petition preferred by the State as against the order of the Tribunal directing payment of six months wages by way of compensation. If by virtue of the interim orders of this Court any payment had been made to the Gang Mazdoors, the State is entitled to adjust the same while paying the back wages to them.

101. In the result, the Writ Petitions preferred on behalf of the Gang Mazdoors are allowed and the Writ Petitions preferred by the respondent State in W.P.Nos. 18507 of 2003, 18993 to 18998 of 2004, 19015 to 19030 of 2004, 19045, 19046, 19048, 21057 to 21059 of 2004 are dismissed.

102. No order as to costs.

103. Consequently, all connected W.P.M.Ps. are closed.

Index: Yes
Internet: Yes
suk
To
1. The Secretary,
Government of Tamilnadu,
Highways Department,
Secretariat, Chennai-9.

2. The Chief Engineer (General),
Highways, Chepauk, Chennai.

3. The Divisional Engineer (High Ways),
Pudukkottai.

4. The Registrar, Tamil Nadu Administrative Tribunal,
Chennai-101.